THE SUBCOMMITTEE ON CRIME, TERRORISM & HOMELAND SECURITY
on H.R. 5219

The Judicial Transparency and Ethics Enhancement Act of 2006

TESTIMONY OF
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June 29, 2006

Introduction

I am pleased to offer this testimony on behalf of the proposed Inspector General legislation.[1] H.R. 5219, *The Judicial Transparency and Ethics Enhancement Act of 2006*, offers modest reforms that will help keep our judiciary independent (no one favors a dependent judiciary) and will help keep our judiciary accountable (because no one favors a judiciary that is above the law).

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[1] For my current resume, please see http://mason.gmu.edu/~rrotunda/. As requested in Chairman Sensenbrenner's letter of 20 June 2006, I am attaching a copy of my resume to this letter.

In brief, I joined the University of Illinois faculty in 1974 after serving as assistant majority counsel for the Watergate Committee. I joined the George Mason faculty in 2002. I co-authored the most widely used course book on legal ethics, *Problems and Materials on Professional Responsibility* (Foundation Press, 9th ed. 2006) and am the author of a leading course book on constitutional law, *Modern Constitutional Law* (West Publishing Co., 7th ed. 2003). I am the coauthor of, L*egal Ethics: The Lawyer's Deskbook on Professional Responsibility* (ABA-Thompson, 4th ed., 2006) (jointly published by the ABA and Thompson Publishing) (with John Dzienkowski), and also the co-author (with John Nowak) of the five volume *Treatise on Constitutional Law* (Thompson Publishing, 3rd ed. 1999), and a one volume *Treatise on Constitutional Law* (Thompson Publishing, 7th ed. 2004). I have authored several other books and more than 200 articles in various law reviews, journals, and newspapers in this country and in Europe. State and federal courts at every level have cited these books and articles more than 1000 times. The New Educational Quality Ranking of U.S. Law Schools (EQR) ranked Professor Rotunda as the eleventh most cited of all law faculty in the United States. See http://www.utexas.edu/law/faculty/bleiter/rankings02/most_cited.html.

Two reactions have accompanied this bill:

FIRST, people wonder why we have waited so long to propose an Inspector General for the courts. An Inspector General already exists for a host of federal agencies. The Inspector General's activities include auditing protecting whistle-blowers, and increasing confidence in the public that government officials spend federal money and resources properly spent and follow federal law. Search the U.S. statutes in Westlaw™ for "Inspector General" and you will find 560 documents. Search, instead, for "Inspector General" under the federal case law, and you will find 3,278 documents, as of 23 June 2006. The concept of "Inspector General" is well-known in the court system, but judges, oddly enough. are immune from it.

There is, for example, an Inspector General for Iraq Reconstruction.[2] The Coalition Provisional Authority, the U.S. overseer of Iraq from June 2003 to June 2004, established a program review board, an independent judiciary and inspector generals in each agency to fight corruption.[3] There is an Inspector General for the Pentagon. Like other inspector generals, he investigates complaints, clears people wrongly accused in the press, or reaffirms the wrongdoing in other cases.[4] There is an Inspector General for the Department of Homeland Security, so that

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[2] AP, A*udit Hits Former U.S. Authority in Iraq*, WASHINGTON TIMES, January 31, 2005, http://www.washingtontimes.com/functions/print.php?StoryID=20050130-094529-3103r

[3] *Id.*

[4] Rowan Scarborough, *General Cleared in Church Speeches Case*, WASHINGTON TIMES, August 20, 2004, http://www.washingtontimes.com/national/20040820-125028-3534r.htm

> "The Pentagon inspector general did not substantiate complaints that Lt. Gen. William G. Boykin misused his Army uniform, violated travel regulations or used improper speech when he addressed 23 church
> *Footnote continued on next page*.

when issues surfaced regarding what may have been improper conduct, the Inspector General investigated. The "passenger on Northwest Flight 327 who blew the who blew the whistle on the incident, said she felt 'vindicated and relieved' after learning the investigation had been ongoing since July."[5]

The House of Representatives has created its own Inspector General.[6] The House Committee on Standards handles ethical complaints. When House Speaker Gingrich assumed that office, he ordered an audit by the House, which outside firms conducted. One engages in

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groups on his views on faith and warfare. Investigators also found Gen. Boykin did not improperly accept speaking fees.

"But the IG report did find that Gen. Boykin violated three rules: He should have gotten clearance from public affairs on the content of his speech; he should have told audiences that his remarks were his own views, and not the Pentagon's; and he should have filled out a form showing that one group reimbursed him $260 for travel."

[5] Audrey Hudson, *Passengers Describe Flight As A Terrorist Dry Run* WASHINGTON TIMES, April 27, 2005, http://www.washingtontimes.com/national/20050426-105951-8168r.htm.

[6] http://clerk.house.gov/legisAct/legisProc/rules/rule2.html . *See also*, http://www.house.gov/IG/ . Rules of the House of Representatives, Rule II: Other Officers And Officials, part 6: Office of Inspector General provide:

> **"(a)** There is established an Office of Inspector General.
> **"(b)** The Inspector General shall be appointed for a Congress by the Speaker, the Majority Leader, and the Minority Leader, acting jointly.
> **"(c)** Subject to the policy direction and oversight of the Committee on House Administration, the Inspector General shall only— (1) conduct periodic audits of the financial and administrative functions of the House and of joint entities; (2) inform the officers or other officials who are the subject of an audit of the results of that audit and suggesting appropriate curative actions; (3) simultaneously notify the Speaker, the Majority Leader, the Minority Leader, and the chairman and ranking minority member of the Committee on House Administration in the case of any financial irregularity discovered in the course of carrying out responsibilities under this clause; (4) simultaneously submit to the Speaker, the Majority Leader, the Minority Leader, and the chairman and ranking minority member of the Committee on House Administration a report of each audit conducted under this clause; and (5) report to the Committee on Standards of Official Conduct information involving possible violations by a Member, Delegate, Resident Commissioner, officer, or employee of the House of any rule of the House or of any law applicable to the performance of official duties or the discharge of official responsibilities that may require referral to the appropriate Federal or State authorities under clause 3(a)(3) of rule XI.**"

such conduct not because he assumes that there is evil afoot, but because he wants to assure everyone that things are fine. Outside auditors perform that function. Inspectors General do so as well.

The Inspectors General home page advises that there are now 57 statutory Inspectors General.[7] The duties of the Inspector General are, in general, to "report waste, fraud, or abuse" and to "report violations of civil rights or civil liberties."[8]

The proposed Inspector General for the Courts would:

- conduct investigations of matters relating to the Judicial branch (other than the Supreme Court), including possible misconduct of judges and proceedings under Chapter 16 of title 28, United States Code, that may require oversight or other action by Congress;
- conduct and supervise audits and investigations;
- prevent and detect waste, fraud and abuse; and
- recommend changes in laws or regulations governing the Judicial Branch.

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[7] http://www.ignet.gov/.

[8] http://www.usdoj.gov/oig/ . See also, *id*. "The Office of the Inspector General (OIG) conducts independent investigations, audits, inspections, and special reviews of United States Department of Justice personnel and programs to detect and deter waste, fraud, abuse, and misconduct, and to promote integrity, economy, efficiency, and effectiveness in Department of Justice operations."

These purposes are salutary. No judge should fear them. An Inspector General will protect judges from frivolous or false charges. Indeed, one wonders why it has taken so long to create an Inspector General for the Courts. No organ of Government should be above the law.

The SECOND reaction to this proposed law is more surprising. There are those who greet this law the way Dracula would greet garlic; they vigorously shy away. The newspapers quote Justice Ruth Bader Ginsburg as saying of a proposal to create an inspector general to monitor the ethical behavior of federal judges: "That's a really scary idea." Ginsburg said, "It sounds to me very much like the Soviet Union was .... That's a really scary idea."[9] "The judiciary is under assault in a way that I haven't seen before."[10]

However, the sky is not falling. If I thought that the proposed, *Judicial Transparency and Ethics Enhancement Act of 2006,* would erode judicial independence, I would not testify in favor of the bill. Opponents do not attack the bill that that is actually proposed but one that they imagine. Frankly, judicial independence will remain if *The Judicial Transparency and Ethics Enhancement Act of 2006* becomes law. Indeed, the bill will strength judicial independence because it will give people greater faith that if there are problems, the Inspector General will deal with them and not sweep them under the rug.

Structural Provisions in Our Constitution Protect the Independence of Each Branch of Government

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[9] Gina Holland, AP, *Ginsburg: Congress' Watchdog Plan 'Scary'*, LAS VEGAS SUN, May 2, 2006, http://www.lasvegassun.com/sunbin/stories/bw-scotus/2006/may/02/050208919.html .

[10] E.g., Tony Mauro, *Justices Fight Back*, USA TODAY, June 20, 2006, at p. 13A, http://www.usatoday.com/printedition/news/20060620/oplede20.art.htm

The Framers created structural protections in the Constitution to protect the independence of each branch, but they put no branch above the law. For Congress, the Framers authorized, *e.g.*, each House to be the Judge of its Elections.[11] They also authorized each House to punish its Members for disorderly conduct, and (if there is a super-majority) to even expel a Member for disorderly conduct.[12] And, of course, the Constitution creates a special "Speech or Debate" privilege of each Member.[13]

The Framers did not create a similar set of immunities for the Judges in Article III courts. The Framers did not make the judges the judge of their own appointments; the judges cannot "expel" a fellow judge; and, of course, there is no privilege analogous to the "Speech or Debate" privilege. Instead, Framers guaranteed judicial independence in a different way: the judges that they would have lifetime appointments and Congress could not reduce their salaries.[14]

It never occurred to the Framers that the judges should be, for example, immune from audit.

Similarly, it never occurred to the Framers that the independence of the judicial branch meant that judges are or should be immune from criticism. If they were immune, law reviews

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[11] U.S. Constitution, Article I, §5, clause 1.

[12] U.S. Constitution, Article I, §5, clause 2.

[13] U.S. Constitution, Article I, §6, clause 1: ". . . and for any Speech or Debate in either House, they shall not be questioned in any other Place."

[14] U.S. Constitution, Article III, §1, clause 1.

would be out of business. We all have the free speech right to criticize judicial decisions, just as judges have the right to criticize each other (or Congress) in their speeches and judicial opinions.

Nor does independence mean that judges are above the law. The purpose of the Inspector General is to protect judges, by providing a ready answer to criticism that they are not following the law,[15] and to protect the judicial system, by providing a structure to deal with valid complaints.

Under the proposed legislation, judges will be able to respond that the Inspector General has investigated and found the complaints to be fruitless. And if the complaint is valid? Then the judges will know that there is a problem, and that it needs correcting. The proposed Inspector General "will not have any authority or jurisdiction over the substance of a judge's opinions."[16] The proposed law would not interfere with judges' independence to write their opinions.

The Judicial Plea for Statutory Changes

Let me furnish a recent example of a an opinion that both makes the case for reform, and pleads for statutory changes. I refer to the *Opinion of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders*, 2006 Westlaw 1344908 (U.S. Judicial

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[15] *See* Ronald D. Rotunda, *Judicial Ethics, the Appearance of Impropriety, and the Proposed New ABA Judicial Code* (The Howard Lichtenstein Lecture in Legal Ethics), __ HOFSTRA LAW REVIEW __ (2006)(forthcoming).

[16] Chairman F. James Sensenbrenner, April 27, 2006, http://judiciary.house.gov/media/pdfs/judgeIGintro42706.pdf.

Conference April 28, 2006).[17] Judge Dolores K. Sloviter, joined by Judges Pasco M. Bowman II and Barefoot Sanders, wrote the majority opinion. Judge Ralph K. Winter, Jr., joined by Judge Carolyn R. Dimmick, dissented.

The majority opinion held that under the federal statute, 28 U.S.C. § 351, *et seq.*, it had no jurisdiction to proceed with discipline because the Chief Circuit Judge of the Ninth Circuit, and the Judicial Council of the Ninth Circuit did not follow the *mandatory* statutory procedures. The majority said that the "chief judge may avoid review by the Judicial Conference (and by definition our committee) by the simple expedient of failing to appoint a special committee under § 353 [of 28 U.S.C.] and instead dismissing a complaint under § 352(b)."[18] *The majority of the judges requested that Congress enact new legislation to solve this problem*.[19]

It hardly presumptively unconstitutional for Congress to accept this judicial invitation and merely amend the various statutes at issue. The proposed Inspector General legislation would be an appropriate response.

This judicial request for congressional help is the most recent chapter in a dispute that started in 2003, when a lawyer filed a judicial misconduct complaint against Federal Judge

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[17] The opinion is reprinted and available on the web at, http://www.uscourts.gov/library/circuitcouncilopinions.pdf.

[18] 2006 WL 1344908 *3.

[19] 2006 WL 1344908 *3: "we believe that *additional legislation* expanding the scope of the Conference's (and, by delegation, this Committee's) jurisdiction is necessary . . . ." *See, e.g.*, Pamela A. MacLean, *Panel Says Judge's Ethics Case Not Handled Properly 9th Circuit Chief Failed To Appoint A Committee*, 28 NATIONAL L.J. 6, at col. 1: " Alleged mishandling of a 2003 judicial misconduct complaint against veteran Los Angeles federal judge Manuel L. Real prompted the federal judicial discipline committee to suggest that Congress expand the committee's authority to review such complaints."

Manuel Real. The complaint alleged that Judge Real had improperly seized a bankruptcy case from another judge in order to aid a woman whose probation he was overseeing. The federal judicial discipline committee ruled that it did not have the power to sanction Judge Real because the Chief Judge of the Ninth Circuit had improperly investigated the complaint.

Judge Ralph Winter's dissent (joined by Judge Dimmick) warned that allowing judges to police themselves is not working. The intentions are valid — the judiciary wanted to police itself, out of respect for an independent judiciary — but the result is a system that does not satisfy the legitimate expectations of the public, for the judiciary is not policing itself:

> "The judicial misconduct procedure is a self-regulatory one. It is self-regulatory *at the request of the judiciary* in a legitimate effort to preserve judicial independence. A self-regulatory procedure suffers from the weakness that many observers will be suspicious that complainants against judges will be disfavored. *The Committee's decision in this case can only fuel such suspicions*."[20]

Later, the judge added:

> "*The required statutory procedure was not followed*. The complaint was dismissed without any discussion by the Chief Circuit Judge or the Council majority of the facts admitted by the District Judge accused of an *improper ex parte* contact. The admitted facts would be regarded by some, if not most,

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[20] 2006 WL 1344908 *11 (emphasis added) (Dissenting Statement of Judge Ralph K. Winter, with whom the Judge Carolyn R. Dimmick joins).

> professional observers as establishing just such a contact. The Committee rules that it has no power to review the Council's decision *because the statutory procedures were not followed* by the Chief Circuit Judge and Council. *The disposition of the present matter is therefore not a confidence builder*."[21]

It is time for a change. When we use a system and it does not work, our response should not be to invoke a shibboleth or catch-phrase. Our response should be to create a system that will work.

Let me summarize, briefly, the facts involving Judge Manuel Real, who has often been the subject of critical appellate rulings.[22] U.S. District Judge Manuel Real decided that he would personally supervise the probation of one Deborah M. Canter. She had pled guilty in April 1999 to one count of loan fraud and three counts of making false statements. She was 42 at the time.[23]

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[21] *In re Opinion of Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders*, 2006 WL 1344908, *12 (emphasis added) (Dissenting Statement of Judge Ralph K. Winter, with whom the Judge Carolyn R. Dimmick joins).

[22] *In re Yagman*, 796 F.2d 1165, 1188 (9th Cir.1986) (case involving Judge Real, where Ninth Circuit reversed the sanctions and remanded for reassignment to another judge), discussed in THOMAS D. MORGAN & RONALD D. ROTUNDA, PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY 144 (Foundation Press, 4th ed. 1987).

Standing Committee on Discipline of U.S. District Court for Central. District of California v. Yagman, 55 F.3d 1430 (9th Cir. 1995) (Ninth Circuit reversed disciplinary proceedings against lawyer who made statements criticizing Judge Real).

[23] Deborah Cantor's lawyer "said that he had 'absolutely zero evidence'" of any improper relationship between [the judge] and Ms. Canter, but was 'suspicious' because Ms. Canter was a 'cute girl' who projected a 'waif' persona that was appealing. At the time he thought that perhaps [the judge] had become aware of her divorce and imminent eviction in the course of one of her probation visits." Quoted in, *In re Complaint of Judicial Misconduct* , 425 F.3d 1179, 1189 (9th Cir. 2005)(Kozinski, J., dissenting).

Two months before she pled guilty, she had had separated from her husband (Gary Canter), who moved out of the house, which they had rented. Deborah Canter continued to live there. The owner of the house was a trust, which Gary's parents had established.

Deborah Canter continued to live in this house but stopped paying rent. In October 1999, Alan Canter, the property's trustee, filed suit, seeking to evict her and collect $5,000 in back rent. Shortly before her eviction, she personally delivered a letter asking Real "for his help in preventing her eviction." Deborah Canter told her lawyer's secretary the letter had "worked." Deborah Canter 's own lawyer said he was "shocked" because it was a "complete no-no going to a judge secretly without talking to the other side."[24]

Real acknowledged meeting with Canter[25] (when the lawyers for the other party were *not* present), justifying his actions by claiming that he believed her legal representation was inadequate. However, he never held a hearing on this issue; he simply asserted it. Moreover, *federal* bankruptcy courts do not have authority to determine whether parties in *state* court proceedings were adequately represented by their counsel.

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[24] *E.g., In re Opinion of Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders*, 2006 WL 1344908, *4 (U.S. Jud. Conf. 2006)(dissent); *In re Complaint of Judicial Misconduct*, 425 F.3d 1179, 1190 (9th Cir. 2005)(dissent); Henry Weinstein, *Complaint Against Judge Has Broader Ramifications*, L.A. TIMES, May 7, 2006, http://www.latimes.com/news/local/la-me-real7may07,1,102251.story?coll=la-headlines-california.

[25] See discussion of ex parte conversations in Ronald D. Rotunda, *Judicial Comments on Pending Cases: The Ethical Restrictions and the Sanctions*, 2001 U. ILL L. REV. 611, 612 (2001).

When the trustee filed motions to evict Cantor, Real denied them. When asked why, Judge Real curtly responded, "Just because I said it."[26]

Judge Real's "orders were not merely lacking in lawful authority, they were based on *ex parte* communications from the debtor for whose benefit those orders were entered."[27]

When Judge Schroeder, Chief Judge of the Ninth Circuit, summarily dismissed an ethics complaint against Judge Manuel Real, the Ninth Circuit's 10-member Judicial Council sent the matter back to her for further disposition. The judges said: "A judge may not use his authority in one case to help a party in an unrelated case."[28] On remand, Judge Schroeder again dismissed the complaint, apparently finding that there was nothing improper.

The Judicial Council decided not to "upset that factual finding,"[29] but Judge Schroeder was not supposed to make any factual findings. First, the Chief Judge did not conduct an evidentiary hearing. Second, under the federal statute[30] and court rules, [31] her authority is limited

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[26] *In re Complaint of Judicial Misconduct*, 425 F.3d 1179, 1184 (9th Cir. 2005) (Kozinski, J., dissenting) (quoting for the transcript).

[27] *In re Complaint of Judicial Misconduct*, 425 F.3d 1179, 1188 (9th Cir. 2005) (Kozinski, J., dissenting). It is well established that judges may not exercise judicial power based on secret or *ex parte* communications from one of the parties to the dispute. *United States v. Thompson*, 827 F.2d 1254, 1258-59 (9th Cir.1987). *See also*, RONALD D. ROTUNDA & JOHN S. DZIENKOWSKI, LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY §§ 10.3-98 to 10-3.10 (Thompson-West, 3d ed. 2005); THOMAS D. MORGAN & RONALD D. ROTUNDA, PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY 682-90 (Foundation Press, 9th ed. 2006).

[28] Judicial Council Order (Dec. 18, 2003) at 5-6, quoted in, *In re Complaint of Judicial Misconduct*, 425 F.3d 1179, 1187 (9th Cir. 2005) (Kozinski, J., dissenting).

[29] *In re Complaint of Judicial Misconduct*, 425 F.3d 1179, 1181.

[30] "The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute." 28 U.S.C. § 352(a).

to determining whether there is credible evidence of misconduct, and she may dismiss the complaint only if credible evidence is entirely lacking. She was not supposed to make any findings of fact, so one wonders why judges would defer to another judge's actions that neither the federal statute nor the court rule authorized.

A panel of judges on the Ninth Circuit demanded that Judge Real acknowledge his misconduct but ruled that "[w]e are satisfied that adequate corrective action has been taken such that there will be no re-occurrence of any conduct that could be characterized as inappropriate."[32] In one of the two dissents, Judge Kozinski complained:

> "Unfortunately, the majority's exiguous order seems far more concerned with not hurting the feelings of the judge in question. But our first duty as members of the Judicial Council is not to spare the feelings of judges accused of misconduct. It is to maintain public confidence in the judiciary by ensuring that substantial allegations of misconduct are dealt with forthrightly and appropriately. This the majority has failed to do."[33]

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[31] *See* 9th Cir. Misconduct R. 4.

[32] *In re Complaint of Judicial Misconduct*, 425 F.3d 1179 (9th Cir. 2005). The panel of judges were Alarcón, Kozinski, Kleinfeld, McKeown and W. Fletcher, Circuit Judges, and Ezra, Levi, McNamee, Strand and Winmill, District Judges.

No judge signed the "order," which was the opinion denying any remedy. Ezra, Chief District Judge, filed an opinion concurring in part and dissenting in part. Kozinski, Circuit Judge, filed dissenting opinion. Winmill, District Judge, filed a dissenting opinion.

[33] *In re Complaint of Judicial Misconduct*, 425 F.3d 1179, 1198 (9th Cir. 2005)(Kozinski, J., dissenting).

The Judicial Conference of the United States referred the matter to a 5-judge disciplinary committee, which concluded (3 to 2) that it could not act because Chief Judge Schroeder failed to convene a special committee. It asked for additional legislation to deal with this issue.

The 2-person dissent explained that two facts were "indisputable" —

> "First, the record would support *a finding of misconduct* in the form of an *ex parte contact* resulting in a judicial ruling. Second, the *mandatory statutory procedures regarding judicial misconduct petitions were not followed by either the Chief Circuit Judge or the Judicial Council of the Ninth Circuit*.[34]

The majority of judges were unwilling to act, and asked that the statute be amended. The various dissenters were dismayed that the there was no discipline of the judge, that the court's "self-regulatory procedure" fuel suspicions that the judges will disfavor investigating their own, and that the *"disposition of the present matter is therefore not a confidence builder*."[35]

Sadly, the dissenters are correct: *"disposition of the present matter is therefore not a confidence builder*." The majority is also correct that Congress must change the statute. The Inspector General legislation would be an appropriate response.

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[34] I*n re Opinion of Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders*, 2006 WL 1344908, *4 (U.S. Jud. Conf. 2006) (Winters, J., dissenting, joined by Dimmick, J.)(emphasis added).

[35] 2006 WL 1344908 *11-*12 (emphasis added) (Dissenting Statement of Judge Ralph K. Winter, with whom the Judge Carolyn R. Dimmick joins).

In the meantime, Judge Real's actions permitted Deborah M. Canter to live rent-free for three years, costing her creditors $35,000 in rent and thousands in legal costs.[36]

Conclusion

The great majority of complaints against federal judges suffer the same fate as the complaint against Judge Real. The are dismissed. More than 99% of the complaints are dismissed. I assume that that figure would charge hardly at all if the federal courts had an Inspector General, because the very great majority of judges are honest and hard-working. But, a few would be investigated and those investigations would increase confidence in the judiciary. Right now, the discipline process is conducted largely in secret.[37]

Even when the process is public, as was eventually the situation in the Judge Real case, one does not know what is going on without a great deal of investigation. The majority opinion in the decision, *In re Opinion of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders*, 2006 Westlaw 1344908 (U.S. Judicial Conference April 28, 2006)[38] manages to talk about the case without ever mentioning the name of the judge one who is the subject of the complaint! This Opinion is really an appeal from the Ninth Circuit opinion, but it is not listed that way, so one does not know that, from reading the majority opinion, which

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[36] Henry Weinstein, *Complaint Against Judge Has Broader Ramifications*, L.A. TIMES, May 7, 2006, http://www.latimes.com/news/local/la-me-real7may07,1,102251.story?coll=la-headlines-california.

[37] Henry Weinstein, *Complaint Against Judge Has Broader Ramifications*, L.A. TIMES, May 7, 2006, http://www.latimes.com/news/local/la-me-real7may07,1,102251.story?coll=la-headlines-california.

[38] The opinion is reprinted and available on the web at, http://www.uscourts.gov/library/circuitcouncilopinions.pdf.

never gives the citation to *In re Complaint of Judicial Misconduct*, 425 F.3d 1179 (9th Cir.2005). One has to search to find out what is going on.

If the federal courts had an Inspector General, we would have more openness and people could not assume that judges are above the law. I have no doubt that the great majority of cases are without merit, but when the process is conducted in secret, we cannot be sure. An Inspector General will give us that assurance. As Professor Steven Lubet of Northwestern University has pointed out, "Federal judges have more insulation than anyone in American political life. A judge with life tenure needs less protection, not more, than an ordinary citizen."[39]

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[39] Quoted in Henry Weinstein, *Complaint Against Judge Has Broader Ramifications*, L.A. TIMES, May 7, 2006, http://www.latimes.com/news/local/la-me-real7may07,1,102251.story?coll=la-headlines-california.